

PROCEDURE 2. COLLECTION OF
INFORMATION ABOUT UNITED STATES PERSONS

A. APPLICABILITY AND SCOPE

This procedure specifies the kinds of information about United States persons that may be collected by DoD intelligence components and sets forth general criteria governing the means used to collect such information. Additional limitations are imposed in Procedures 5 through 10 on the use of specific collection techniques.

B. EXPLANATION OF UNDEFINED TERMS

1. Collection. Information shall be considered as "collected" only when it has been received for use by an employee of a DoD intelligence component in the course of his official duties. Thus, information volunteered to a DoD intelligence component by a cooperating source would be "collected" under this procedure when an employee of such component officially accepts, in some manner, such information for use within that component. Data acquired by electronic means is "collected" only when it has been processed into intelligible form.

2. Cooperating sources means persons or organizations that knowingly and voluntarily provide information to DoD intelligence components, or access to information, at the request of such components or on their own initiative. These include government agencies, law enforcement authorities, credit agencies, academic institutions, employers, and foreign governments.

3. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization, or person.

4. Overt means refers to methods of collection whereby the source of the information being collected is advised, or is otherwise aware, that he is providing such information to the Department of Defense or a component thereof.

C. TYPES OF INFORMATION THAT MAY BE COLLECTED ABOUT UNITED STATES PERSONS

Information that identifies a United States person may be collected by a DoD intelligence component only if it is necessary to the conduct of a function assigned the collecting component, and only if it falls within one of the following categories:

1. Information obtained with consent. Information may be collected about a United States person who consents to such collection.

2. Publicly available information Information may be collected about a United States person if it is publicly available.

3. Foreign intelligence. Subject to the special limitation contained in section E, below, information may be collected about a United States person if the information constitutes foreign intelligence, provided the intentional collection of foreign intelligence about United States persons shall be limited to persons who are:

a. Individuals reasonably believed to be officers or employees, or otherwise acting for or on behalf, of a foreign power;

b. An organization reasonably believed to be owned or controlled, directly or indirectly, by a foreign power;

c. Persons or organizations reasonably believed to be engaged or about to engage, in international terrorist or international narcotics activities;

d. Persons who are reasonably believed to be prisoners of war; missing in action; or are the targets, the hostages, or victims of international terrorist organizations; or

e. Corporations or other commercial organizations believed to have some relationship with foreign powers, organizations, or persons.

4. Counterintelligence. Information may be collected about a United States person if the information constitutes counterintelligence, provided the intentional collection of counterintelligence about United States persons must be limited to:

a. Persons who are reasonably believed to be engaged in, or about to engage in, intelligence activities on behalf of a foreign power, or international terrorist activities.

b. Persons in contact with persons described in paragraph C.4.a., above, for the purpose of identifying such person and assessing their relationship with persons described in paragraph C.4.a., above.

5. Potential sources of assistance to intelligence activities. Information may be collected about United States persons reasonably believed to be potential sources of intelligence, or potential sources of assistance to intelligence activities, for the purpose of assessing their suitability or credibility. This category does not include investigations undertaken for personnel security purposes.

6. Protection of intelligence sources and methods. Information may be collected about a United States person who has access to, had access to, or is otherwise in possession of, information which reveals foreign intelligence and counterintelligence sources or methods, when collection is reasonably believed necessary to protect against the unauthorized disclosure of such information; provided that within the United States, intentional collection of such information shall be limited to persons who are:

a. Present and former DoD employees;

b. Present or former employees of a present or former DoD contractor;
and

c. Applicants for employment at DoD or at a contractor of DoD.

7. Physical security. Information may be collected about a United States person who is reasonably believed to threaten the physical security of DoD employees, installations, operations, or official visitors. Information may also be collected in the course of a lawful physical security investigation.

8. Personnel security. Information may be collected about a United States person that arises out of a lawful personnel security investigation.

9. Communications security. Information may be collected about a United States person that arises out of a lawful communications security investigation.

10. Narcotics. Information may be collected about a United States person who is reasonably believed to be engaged in international narcotics activities.

11. Threats to safety. Information may be collected about a United States person when the information is needed to protect the safety of any person or organization, including those who are targets, victims, or hostages of international terrorist organizations.

12. Overhead reconnaissance. Information may be collected from overhead reconnaissance not directed at specific United States persons.

13. Administrative purposes. Information may be collected about a United States person that is necessary for administrative purposes.

D. GENERAL CRITERIA GOVERNING THE MEANS USED TO COLLECT INFORMATION ABOUT UNITED STATES PERSONS

1. Means of collection. DoD intelligence components are authorized to collect information about United States persons by any lawful means, provided that all such collection activities shall be carried out in accordance with E.O. 12333 (reference (a)), and this Regulation, as appropriate.

2. Least intrusive means. The collection of information about United States persons shall be accomplished by the least intrusive means. In general, this means the following:

a. To the extent feasible, such information shall be collected from publicly available information or with the consent of the person concerned;

b. If collection from these sources is not feasible or sufficient, such information may be collected from cooperating sources;

c. If collection from cooperating sources is not feasible or sufficient, such information may be collected, as appropriate, using other lawful investigative techniques that do not require a judicial warrant or the approval of the Attorney General; then

d. If collection through use of these techniques is not feasible or sufficient, approval for use of investigative techniques that do require a judicial warrant or the approval of the Attorney General may be sought.

E. SPECIAL LIMITATION ON THE COLLECTION OF FOREIGN INTELLIGENCE WITHIN THE UNITED STATES.

Within the United States, foreign intelligence concerning United States persons may be collected only by overt means unless all the following conditions are met:

1. The foreign intelligence sought is significant and collection is not undertaken for the purpose of acquiring information concerning the domestic activities of any United States person;

2. Such foreign intelligence cannot be reasonably obtained by overt means;

3. The collection of such foreign intelligence has been coordinated with the Federal Bureau of Investigation (FBI); and

4. The use of other than overt means has been approved in writing by the head of the DoD intelligence component concerned, or his single designee, as being consistent with these procedures. A copy of any approval made pursuant to this section shall be provided the Deputy Under Secretary of Defense (Policy).